Supreme Court, U.S.
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No. 03-1439

IN THE

# Supreme Court of the United States

ALLISON SOUSA,
as Executor of the Will of Christopher Sousa, *et al.*,

*Petitioners,*

*v.*

UNILAB CORPORATION CLASS II (NON-EXEMPT)
MEMBER GROUP BENEFIT PLAN, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the three-year contractual limitations clause contained in the Benefit Plan issued under the Employee Retirement Income Security Act of 1974 ("ERISA") is reasonable and "meets any minimum required by law?"

2. Whether the ERISA Plan's three-year contractual limitations period was triggered?

## CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Principal Life Insurance Company ("Principal") is a corporation, organized and existing under the laws of the State of Iowa. Principal is a subsidiary of Principal Financial Group, Inc., which is a publicly traded company. No other publicly held company owns 10% or more of its stock.

Respondent Unilab Corporation Class II (Non-Exempt) Members Group Benefit Plan (the "Plan," collectively with Principal, "Respondents") is an employee benefit plan governed by the Employee Retirement Income Security Act ("ERISA").

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## INTRODUCTION

The instant Petition for a Writ of Certiorari fails to meet any of the requirements of Rule 10 of the United States Supreme Court Rules. Not only does it fail to present an important question of federal law, it also fails to present any conflict amongst the Court of Appeals. It merely raises issues that are unique to the particular facts of this case.

First, the Petitioners unabashedly attempt to conjure up a split of authority where none exists. Specifically, Petitioners point to an Eighth Circuit case, *Harris v. The Epoch Group L.C.*, 357 F.3d 822 (8th Cir. 2004), which addressed a contractual limitations provision that is distinctly different from the one in the instant case. In *Harris*, the contract limitations provision expressly states that all limitations would be extended to a longer limitations period provided by state law. Here, no such contract language exists because the parties agreed that all limitations would be extended to the *minimum* allowed by law – language that is plainly different from that found in *Harris*.

Second, Petitioners flagrantly misstate the law – claiming that in all ERISA actions, state law always supplies the applicable statute of limitations. However, this is clearly not the law as federal courts have consistently held that parties can agree to be bound by a shorter time limitations period that is reasonable.

Finally, Petitioners argue that the Ninth Circuit failed to follow its earlier ruling in *Mogck v. Unum Life Ins. Co. of America*, 292 F.3d 1025 (9th Cir. 2002). But Petitioners again fail to mention that the facts in *Mogck* are distinctly different from the facts in this case. In fact, the decision below

expressly distinguished *Mogck*, a procedural disposition that Petitioners have conveniently failed to mention. In short, the issues and arguments raised in the Petition are not based on any disputed federal question of law or on any conflict between the Ninth Circuit and other Courts of Appeals. Instead, they are based on misstatements of law and facts that are unique to this case. Accordingly, this matter does not warrant review by this Court.

## STATEMENT OF THE CASE

Unilab provides employment benefits to its eligible employees under its Unilab Corporation Class II (Non-Exempt) Members Group Benefit (the "Plan"). For this purpose, Unilab purchased Principal Group Insurance Policy No. GL88375, which provides Group Accidental Death and Dismemberment Insurance and Long Term Disability Insurance (the "Policy"). The Plan is governed by ERISA. (Petitioners' Appendix (hereinafter "Pet. App.") at p. 10.)

Pursuant to the Policy, the life insurance and accidental death benefits for non-exempt employees are separately calculated as:

> The amount that is equal to 1½ times [the employee's] Basic Annual Compensation (this amount will be rounded to the next higher $1,000, if it is not already an exact multiple of 1,000.)

(Pet. App. at p. 11.)

Under the terms of the Policy, accidental death benefits are payable when certain terms are met. Specifically, the Policy provides:

> Benefit Qualification
>
> To qualify for benefit payment, all of the following must occur:
>
> - The Member must be injured while insured for Accidental Death and Dismemberment Insurance under this policy; and
> - The injury must be through accidental means; and
> - The injury must be the direct and sole cause of a loss listed in this Section B, Article 3; and
> - The loss must occur within 90 days of the injury; and
> - The limitations listed in this Section B, Article 4, must not apply; and
> - The claim requirements listed in this Section B, Article 5, must be satisfied.

(Pet. App. at p. 11.)

The Policy also provides:

> Prompt Filing
>
> Completed claim forms and other information needed to prove loss should be filed promptly. Proof of loss should be sent to us within 90 days after the date of loss. Proof of loss sent later will be accepted only if there is reasonable cause for delay.
>
> * * * * *
>
> Legal Action
>
> Legal action to recover Accidental Death and Dismemberment benefits may not be started earlier than 60 days after proof of loss has been filed. No legal action may be started later than three years after that proof is required to be filed.
>
> Time Limits
>
> All time limits listed in this section will be extended to meet any minimums required by law.

(Pet. App. at pp. 11-12.)

Beginning on February 20, 1990, Christopher Sousa ("Mr. Sousa") was employed by Unilab as a phlebotomist. As a part of his Unilab employment compensation package, Mr. Sousa was covered under the Policy. (Pet. App. at p. 10.)

Mr. Sousa died on March 10, 1997. At the time of his death, Mr. Sousa's annual salary was $20,800.00. (Pet. App. at p. 13.) According to the death certificate, the immediate cause of Mr. Sousa's death was "(1) asphyxia, (2) plastic bag over head, immersed in full sink of water and (3) engaged in autoerotic experiment." (Pet. App. at p. 15.)

As a non-exempt employee under the Policy, Mr. Sousa's term life insurance benefits were $32,000.00. On or about June 5, 1997, Principal paid the life insurance benefits in the amount of $32,000.00 to Petitioners, the beneficiaries under the Policy. Principal also advised Petitioners that their additional claim for accidental death benefits required further review. (Pet. App. at p.16.)

On August 12, 1997, Principal advised Petitioners that it denied their claim for accidental death benefits. (Pet. App. at pp. 16-17.)

On or about December 9, 1997, Principal received a letter from Petitioners' counsel, Michael Vergara, who disagreed with Principal's claim decision and requested the payment of benefits. (Pet. App. at p. 17.)

On or about December 30, 1997, Principal advised Mr. Vergara that its legal department had reviewed his correspondence and reaffirmed its decision to deny Petitioners' claim on the grounds that Mr. Sousa's death was the result of willful self-injury or self-destruction. (Pet. App. at p. 18.)

Petitioners commenced the instant action on August 9, 2001. (Pet. App. at p. 18.)

On August 13, 2002, the district court granted Respondents' motion for summary judgment on the ground that Petitioners did not commence the action within the three-year contractual limitations period. The court rejected Petitioners' argument that because the Policy specifically states that the limitations period will be extended to meet any minimum required by law, California's four-year statute of limitations applies. In rejecting Petitioners' argument, the court noted that Federal law does not require all statutes of limitations for ERISA claims to be four years. It relied on the well-established rule that contractual limitations provisions are enforceable as long as they are reasonable, and because the Plan's three-year limitations period is allowed by law, the four-year limitations period provided by California statute is not substituted into the Plan. (Pet. App. at pp.21-23.) *See Northlake Regional Medical Center v. Waffle House System Employee Benefit Plan*, 160 F.3d 1301, 1303 (11th Cir. 1998) (the 90-day limitations period prescribed by the Plan is reasonable and enforceable); *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 874-75 (7th Cir. 1997) (upholding a contractual limitations period of three years instead of a state statute of limitations of six years).

Moreover, the district court concluded that to adopt the meaning advanced by Petitioners, the Plan would have had different language. Had the Plan provided that the time limits would be extended to the statute of limitations, the Plan would have explicitly said so or not had any contractual limitations. Had the Plan provided that the time limits would be extended to meet the maximum required by law, the language would have provided that any time limit is extended to a longer statutory period or to be the maximum allowed by law. (Pet. App. at p. 26.)

The district court also rejected Petitioners' reliance on *Mogck*, *supra*, 292 F.3d 1025, and their argument that because Petitioners allegedly did not provide the necessary proof of claim, the three-year contractual limitations period was never triggered. The district court noted the fact pattern in this case is patently different from that in *Mogck* because there, the insured did not submit a proof of loss. *Id.* at 1029. Petitioners neither argued nor presented evidence that they did not provide the proof of loss to Respondents. The district court correctly concluded that the proof of loss was provided because Respondents paid the life insurance benefits. (Pet. App. at pp. 26-27.)

The Ninth Circuit affirmed the district court's ruling. It held that the Plan's contractual limitations period was not extended to meet the California four-year statutory period. The Ninth Circuit stated that "if that had been its intent, the Plan could have stated that its period of limitations would be the same as the state's. The California statute of limitations functions as a *maximum* time to file an action not 'a *minimum* required by law.'" (Pet. App. at pp. 3-4.) (Emphasis in original.) The Ninth Circuit also distinguished *Mogck,* finding that the three-year contractual limitations period was triggered in this case because Respondents paid the life insurance benefits. The Ninth Circuit also concluded that there was no evidence suggesting that proof of loss was not provided. (Pet. App. at p. 3.)

Petitioners requested a rehearing before the Ninth Circuit, which was denied. (Pet. App. at p. 34.)

## REASONS FOR DENYING THE PETITION

The decision below does not conflict with a decision of this Court, any Court of Appeals, or any federal district court. In fact, it is consistent with federal common law, which upholds contractual limitations periods that are *reasonable*. Moreover, the facts in this case do not involve any overreaching substantive issue that could threaten the uniformity amongst the federal courts. Each one of Petitioners' argument is either legally or factually distinguishable from Petitioners' cited authorities. In the end, this case does not involve anything more than an interpretation of a contract provision that is unique only to this case.

### A. THERE IS NO SPLIT AMONGST THE CIRCUIT ON THE APPLICATION OF THE CONTRACTUAL LIMITATIONS PROVISION AT ISSUE.

#### 1. The Contractual Limitations Provision Addressed By The Eighth Circuit In *Harris v. The Epoch Group, L.C.* Is Based On Language That Is Different From The Language In the Instant Plan.

Petitioners suggest that the Ninth Circuit's decision to uphold the three-year contractual period is inconsistent with the Eighth Circuit's ruling in *Harris*, *supra*, 357 F.3d 822. (Petition at p. 8.) However, Petitioners' reliance on *Harris* to fabricate a supposed "split" between the Ninth Circuit and the Eighth Circuit is misleading. Indeed, there is no split. The contractual limitations provision addressed in *Harris* is markedly different from the one in the instant matter. There,

the contractual limitations provision expressly alludes to the applicable state law. It provides:

> No action at law or in equity shall be brought to recover under the Plan . . . unless brought within three years from the expiration of the time within which proof of claim is required in accordance with the Plan's claims procedures ***or such longer period as required by applicable state laws.*** [Emphasis added.]

*Id.* at 824.

There is no reference or intimation that the Plan's limitations period would be extended to a "longer period as required by applicable state laws" – as was the case in *Harris.* In contrast, the Plan extends the limitations period to the ***minimum*** period that is reasonable by law. In fact, the Ninth Circuit's opinion expressly recognized this distinction when it stated:

> If that had been its intent, the Plan could have stated that its period of limitations would be the same as the state's. The California statute of limitations functions as a *maximum* time to file an action not "a *minimum* required by law." (Pet. App. 3-4.)

Accordingly, the *Harris* holding does not stand in conflict with the Ninth Circuit's holding in this case.

### 2. Both the Eighth And Ninth Circuits Recognize Contractual Limitations Periods That Are Shorter Than Those Required By State Laws.

Petitioners next argue the distinction between the phrase "required by applicable state laws" in *Harris* and the phrase "required by law" in the Plan is meaningless and superfluous because in all ERISA actions, state law always supplies the applicable statute of limitations. (Petition at p. 7.) Again, Petitioners' legal argument is simply wrong and contrary to federal common law.

As stated in *Harris*, the very case cited by Petitioner, "under federal common law, 'a contract should be interpreted as to give meaning to all of its terms – presuming that every provision was intended to accomplish some purpose, and that none are deemed superfluous.'" *Id.* at 825, quoting *Transitional Learning Cmty. at Galveston, Inc. v. United States Office of Personnel Mgmt.*, 220 F.3d 427, 431 (5th Cir. 2000). Hence, the phrase "required by law" in the Plan is not superfluous.

Moreover, contrary to Petitioners' argument that all limitation periods are governed by state statutes of limitations, *Harris* recognizes the parties' right to have "contractually bound themselves to a shorter limitations period than that required by state law." *Id.* The Ninth Circuit reached the same conclusion in this case by recognizing that the contractual limitations period in the Plan is not replaced by California's four-year limitations period. (Pet. App. at pp. 3-4.) The Ninth Circuit holding is not only consistent with the Eighth Circuit's ruling in *Harris*, but also in accord with other federal courts that have enforced reasonable contractual limitations periods that are shorter than state statutes of limitations. *See, e.g., Northlake Regional Medical Center, supra*, 160 F.3d at 1303 (the 90-day limitations period prescribed by the Plan is reasonable and enforceable); *Doe v. Blue Cross & Blue Shield United of Wisconsin, supra*, 112 F.3d at 874-75 (upholding a contractual limitations period

of three years instead of state statute of limitations of six years); *Alcorn v. Raytheon Co.*, 175 F. Supp. 2d 117, 122 (D. Mass. 2001) (holding that contractual statute of limitation period of three years is reasonable and enforceable); *Hembress v. Provident Life and Accident Ins. Co.*, 127 F. Supp. 2d 1265, 1269 (N.D. Ga. 2000) (holding three-year contractual limitation period for bringing action to recover benefits was reasonable); *Allen v. Union Mutual Stock Life Ins. Co.*, 989 F. Supp. 961, 965 (S.D. Ohio 1997) (upholding three-year contractual statute of limitations); *Bomis v. Metropolitan Life Ins. Co.*, 970 F. Supp. 584, 587 (E.D. Mich. 1997) (same); *Chilcote v. Blue Cross & Blue Shield United*, 841 F. Supp. 877, 880 (E.D. Wis. 1993) (same). *See also* 44 Am. Jur. 2d Insurance § 1879 (1982) ("Rule that contractual limitations periods shorter than statute of limitations are permissible provided they are reasonable is applicable to ERISA plans . . ."). Accordingly, there is ***no conflict*** between the Eighth and Ninth Circuits. Both Circuits recognize contractual limitations periods that are shorter than state law are valid and enforceable.

### 3. The District Court's And Ninth Circuit's Interpretation Of The Contractual Limitations Provision Was Correct.

Confronted with the absence of a conflict in the holdings of the Court of Appeals, Petitioners contend that the term "minimums" in the Plan's provision describing that "[a]ll time limits listed in this section will be extended to meet any minimums required by law" is ambiguous. (Petition at p. 8.) But this is just another attempt by Petitioners to fabricate an issue that is worthy of certiorari review, where none exists. It amounts to nothing more than a matter of contract interpretation that is unique to this case. Moreover, Petitioners never raised this argument before the Ninth Circuit or the

district court. *Sprietsma v. Mercury Marine, a Div. of Brunswick Corp.*, 537 U.S. 51, 55-56, 123 S. Ct. 518, 522-523, 154 L. Ed. 2d 466 (2002) (argument was waived on review by Supreme Court, where it was not raised below). Finally, contrary to Petitioners' contention, there is no ambiguity in the Plan's language. The term "minimums" simply references what is the shortest amount of time allowed under the law. If the Plan's limitations period were six months, the time limit would have been extended to three years – the minimum time period that is allowed by law. *See, e.g., Doe v. Blue Cross & Blue Shield, supra*, 112 F.3d at 874-75 (upholding a contractual limitations period of three years); *Alcorn, supra*, 175 F. Supp. 2d at 122 (same). Alternatively, if federal courts were to find five years as the minimum or reasonable time period to commence an action, the three-year limitations period would be extended to five years – the minimum period of time. The language is logical and unambiguous.

## B. THE ISSUE OF WHETHER THE LIMITATIONS PERIOD WAS TRIGGERED IS UNIQUE ONLY TO THE FACTS IN THIS CASE.

Petitioners' final argument – that the three-year contractual limitations was never triggered because Respondents allegedly did not comply with the terms of the Plan – does not warrant review by this Court. (Petition at pp. 9-11.) Again, Petitioners raise a factual issue that is distinctive to the instant case. It has no significance in resolving any federal question of law or promoting uniformity amongst the Circuits.

Moreover, Petitioners' argument has no basis in fact or in law. Petitioners cite the Ninth Circuit's decision in *Mogck*,

*supra*, 292 F.3d 1025. In *Mogck*, after two years of paying disability benefits, the defendant disability insurance company wrote the plaintiff a letter advising that it was discontinuing disability payments. *Id.* at 1027. The plaintiff provided additional medical documents, and the defendant concluded that it would still terminate benefits. *Id.* The plaintiff sued under ERISA. *Id.* After recognizing that a four-year statute of limitations normally applies to ERISA claims, the Ninth Circuit noted that the policy provided that any legal action could not be started "more than three years after the time *proof of claim* is required." *Id.* at 1028 (emphasis in original). Despite this contractual limitations period, the Ninth Circuit concluded that the three-year limitation period did not apply because it began to run on the date "proof of claim is required." *Id.* at 1028-29. The Ninth Circuit found that the "proof of loss" date had never been triggered by the defendant because the defendant had never requested proof of the plaintiff's continuing disability claim. *Id.* at 1029. The Ninth Circuit's holding in *Mogck* rests on the exceptional fact that proof of the plaintiff's continued disability (the loss) was never given to the defendant. *Id.*

The *Mogck* decision has no absolutely application in this case. As the district court found, and the Ninth Circuit agreed, Petitioners did provide the proof of loss because Respondents paid life insurance benefits. (Pet. App. at pp. 3 & 27.) Petitioners have failed to provide evidence that their case is similar to *Mogck*, where the contractual limitation period was never triggered because there the defendant never requested, and the plaintiff never provided, any proof of loss. Here, Petitioners submitted a death certificate evidencing the loss, and a claim form requesting accidental death benefits. In fact, both the district court and the Ninth Circuit espressly distinguished *Mogck* and correctly rejected Petitioners'

argument. (Pet. App. at pp. 3, & 26-27.) As such, when Principal denied the claim on August 12, 1997 and reaffirmed the denial on December 20, 1997, the Plan's contractual limitations period of three years was triggered. Accordingly, this action, filed more than three years after Principal's initial denial of accidental death benefits and after Principal's reaffirmation of the denial, is barred by the Plan's limitation period. These facts are unique to this case and have no widespread impact on any application of federal law.

## CONCLUSION

Based on the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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